

House File 2453

S-5165

1 Amend House File 2453, as passed by the House, as
2 follows:

3 1. By striking everything after the enacting clause
4 and inserting:

5 <Section 1. Section 16.188, subsection 3, paragraph
6 b, subparagraph (1), Code 2014, is amended to read as
7 follows:

8 (1) Projects that are eligible for historic
9 preservation and cultural and entertainment district
10 tax credits under section ~~404A.1~~ 404A.2.

11 Sec. 2. Section 404A.1, Code 2014, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 **404A.1 Definitions.**

15 For purposes of this chapter, unless the context
16 otherwise requires:

17 1. "*Completion date*" means the date on which
18 property that is the subject of a qualified
19 rehabilitation project is placed in service, as that
20 term is used in section 47 of the Internal Revenue
21 Code.

22 2. "*Department*" means the department of cultural
23 affairs.

24 3. "*Eligible taxpayer*" means the owner of
25 the property that is the subject of a qualified
26 rehabilitation project, or another person who will
27 qualify for the federal rehabilitation credit allowed
28 under section 47 of the Internal Revenue Code with
29 respect to the property that is the subject of a
30 qualified rehabilitation project.

31 4. "*Nonprofit organization*" means an organization
32 described in section 501 of the Internal Revenue Code
33 unless the exemption is denied under section 501, 502,
34 503, or 504 of the Internal Revenue Code. "*Nonprofit*
35 *organization*" does not include a governmental body, as
36 that term is defined in section 362.2.

37 5. "*Program*" shall mean the historic preservation
38 and cultural and entertainment district tax credit
39 program set forth in this chapter.

40 6. a. "*Qualified rehabilitation expenditures*" means
41 the same as defined in section 47 of the Internal
42 Revenue Code. Notwithstanding the foregoing sentence,
43 expenditures incurred by an eligible taxpayer that is
44 a nonprofit organization shall be considered "*qualified*
45 *rehabilitation expenditures*" if they are any of the
46 following:

47 (1) Expenditures made for structural components, as
48 that term is defined in 26 C.F.R. §1.48-1(e)(2).

49 (2) Expenditures made for architectural and
50 engineering fees, site survey fees, legal expenses,

1 insurance premiums, and development fees.
2 *b. "Qualified rehabilitation expenditures"* does not
3 include those expenditures financed by federal, state,
4 or local government grants or forgivable loans unless
5 otherwise allowed under section 47 of the Internal
6 Revenue Code.
7 *c. "Qualified rehabilitation expenditures"* may
8 include expenditures incurred prior to the date
9 an agreement is entered into under section 404A.3,
10 subsection 3.
11 7. *"Qualified rehabilitation project"* means a
12 project for the rehabilitation of property in this
13 state that meets all of the following criteria:
14 *a.* The property is at least one of the following:
15 (1) Property listed on the national register of
16 historic places or eligible for such listing.
17 (2) Property designated as of historic significance
18 to a district listed in the national register of
19 historic places or eligible for such designation.
20 (3) Property or district designated a local
21 landmark by a city or county ordinance.
22 (4) A barn constructed prior to 1937.
23 *b.* The property meets the physical criteria and
24 standards for rehabilitation established by the
25 department by rule. To the extent applicable, the
26 physical standards and criteria shall be consistent
27 with the United States secretary of the interior's
28 standards for rehabilitation.
29 *c.* The project has qualified rehabilitation
30 expenditures that meet or exceed the following:
31 (1) In the case of commercial property,
32 expenditures totaling at least fifty thousand dollars
33 or fifty percent of the assessed value of the property,
34 excluding the land, prior to rehabilitation, whichever
35 is less.
36 (2) In the case of property other than commercial
37 property, including but not limited to barns
38 constructed prior to 1937, expenditures totaling at
39 least twenty-five thousand dollars or twenty-five
40 percent of the assessed value, excluding the land,
41 prior to rehabilitation, whichever is less.
42 Sec. 3. Section 404A.2, Code 2014, is amended by
43 striking the section and inserting in lieu thereof the
44 following:
45 **404A.2 Historic preservation and cultural and**
46 **entertainment district tax credit.**
47 1. An eligible taxpayer who has entered into
48 an agreement under section 404A.3, subsection 3,
49 is eligible to receive a historic preservation and
50 cultural and entertainment district tax credit

1 in an amount equal to twenty-five percent of the
2 qualified rehabilitation expenditures of a qualified
3 rehabilitation project that are specified in the
4 agreement. Notwithstanding any other provision of
5 this chapter or any provision in the agreement to the
6 contrary, the amount of the tax credits shall not
7 exceed twenty-five percent of the final qualified
8 rehabilitation expenditures verified by the department
9 pursuant to section 404A.3, subsection 5, paragraph
10 "c".

11 2. The tax credit shall be allowed against the
12 taxes imposed in chapter 422, divisions II, III,
13 and V, and in chapter 432. An individual may claim
14 a tax credit under this section of a partnership,
15 limited liability company, S corporation, estate,
16 or trust electing to have income taxed directly to
17 the individual. For an individual claiming a tax
18 credit of an estate or trust, the amount claimed
19 by the individual shall be based upon the pro rata
20 share of the individual's earnings from the estate
21 or trust. For an individual claiming a tax credit
22 of a partnership, limited liability company, or S
23 corporation, the amount claimed by the partner, member,
24 or shareholder, respectively, shall be based upon
25 the amounts designated by the eligible partnership,
26 S corporation, or limited liability company, as
27 applicable.

28 3. Any credit in excess of the taxpayer's tax
29 liability for the tax year shall be refunded with
30 interest computed under section 422.25. In lieu of
31 claiming a refund, a taxpayer may elect to have the
32 overpayment shown on the taxpayer's final, completed
33 return credited to the tax liability for the following
34 year.

35 4. a. To claim a tax credit under this section,
36 a taxpayer shall include one or more tax credit
37 certificates with the taxpayer's tax return.

38 b. The tax credit certificate shall contain the
39 taxpayer's name, address, tax identification number,
40 the amount of the credit, the name of the eligible
41 taxpayer, any other information required by the
42 department of revenue, and a place for the name and tax
43 identification number of a transferee and the amount of
44 the tax credit being transferred.

45 c. The tax credit certificate, unless rescinded by
46 the department, shall be accepted by the department
47 of revenue as payment for taxes imposed in chapter
48 422, divisions II, III, and V, and in chapter 432,
49 subject to any conditions or restrictions placed by
50 the department or the department of revenue upon the

1 face of the tax credit certificate and subject to the
2 limitations of this program.

3 5. a. Tax credit certificates issued under
4 section 404A.3 may be transferred to any person.
5 Within ninety days of transfer, the transferee shall
6 submit the transferred tax credit certificate to the
7 department of revenue along with a statement containing
8 the transferee's name, tax identification number,
9 and address, the denomination that each replacement
10 tax credit certificate is to carry, and any other
11 information required by the department of revenue.
12 However, tax credit certificate amounts of less
13 than the minimum amount established by rule of the
14 department of revenue shall not be transferable.

15 b. Within thirty days of receiving the transferred
16 tax credit certificate and the transferee's statement,
17 the department of revenue shall issue one or more
18 replacement tax credit certificates to the transferee.
19 Each replacement tax credit certificate must contain
20 the information required for the original tax credit
21 certificate and must have the same expiration date that
22 appeared on the transferred tax credit certificate.

23 c. A tax credit shall not be claimed by a
24 transferee under this section until a replacement tax
25 credit certificate identifying the transferee as the
26 proper holder has been issued. The transferee may use
27 the amount of the tax credit transferred against the
28 taxes imposed in chapter 422, divisions II, III, and
29 V, and in chapter 432, for any tax year the original
30 transferor could have claimed the tax credit. Any
31 consideration received for the transfer of the tax
32 credit shall not be included as income under chapter
33 422, divisions II, III, and V. Any consideration
34 paid for the transfer of the tax credit shall not be
35 deducted from income under chapter 422, divisions II,
36 III, and V.

37 6. For purposes of the individual and corporate
38 income taxes and the franchise tax, the increase in
39 the basis of the rehabilitated property that would
40 otherwise result from the qualified rehabilitation
41 expenditures shall be reduced by the amount of the
42 credit computed under this section.

43 Sec. 4. Section 404A.3, Code 2014, is amended by
44 striking the section and inserting in lieu thereof the
45 following:

46 **404A.3 Application and registration — agreement —**
47 **compliance and examination.**

48 1. *Application and fees.*

49 a. An eligible taxpayer seeking historic
50 preservation and cultural and entertainment district

1 tax credits provided in section 404A.2 shall make
2 application to the department in the manner prescribed
3 by the department.

4 *b.* The department may accept applications on a
5 continuous basis or may accept applications, or one or
6 more components of an application, during one or more
7 application periods.

8 *c.* The application shall include any information
9 deemed necessary by the department to evaluate
10 the eligibility under the program of the applicant
11 and the rehabilitation project, the amount of
12 projected qualified rehabilitation expenditures of a
13 rehabilitation project, and the amount and source of
14 all funding for a rehabilitation project. An applicant
15 shall have the burden of proof to demonstrate to the
16 department that the applicant is an eligible taxpayer
17 and the project is a qualified rehabilitation project
18 under the program.

19 *d.* The department may establish criteria for the
20 use of electronic or other alternative filing or
21 submission methods for any application, document, or
22 payment requested or required under this program. Such
23 criteria may provide for the acceptance of a signature
24 in a form other than the handwriting of a person.

25 *e.* (1) The department may charge application
26 and other fees to eligible taxpayers who apply to
27 participate in the program. The amount of such
28 fees shall be determined based on the costs of the
29 department associated with administering the program.

30 (2) Fees collected by the department pursuant to
31 this paragraph shall be deposited with the department
32 pursuant to section 303.9, subsection 1.

33 *2. Registration.*

34 *a.* Upon review of the application, the department
35 may register a qualified rehabilitation project under
36 the program. If the department registers the project,
37 the department shall make a preliminary determination
38 as to the amount of tax credits for which the project
39 qualifies.

40 *b.* After registering the qualified rehabilitation
41 project, the department shall notify the eligible
42 taxpayer of successful registration under the program.
43 The notification shall include the amount of tax
44 credits under section 404A.2 for which the qualified
45 rehabilitation project has received a tentative award
46 and a statement that the amount is a preliminary
47 determination only.

48 *3. Agreement.*

49 *a.* Upon successful registration of a qualified
50 rehabilitation project, the eligible taxpayer shall

1 enter into an agreement with the department for the
2 successful completion of all requirements of the
3 program.

4 *b.* The agreement shall contain mutually agreeable
5 terms and conditions which, at a minimum, provide for
6 the following:

7 (1) The amount of the tax credit award. An
8 eligible taxpayer has no right to receive a tax
9 credit certificate or claim a tax credit until all
10 requirements of the agreement and subsections 4 and 5
11 have been satisfied. The amount of tax credit included
12 on a tax credit certificate issued under this section
13 shall be contingent upon verification by the department
14 of the amount of final qualified rehabilitation
15 expenditures.

16 (2) The rehabilitation work to be performed.

17 (3) The budget of the qualified rehabilitation
18 project, including the projected qualified
19 rehabilitation expenditures, allowable cost overruns,
20 and the source and amount of all funding received or
21 anticipated to be received. The amount of allowable
22 cost overruns provided for in the agreement shall not
23 exceed the following amount:

24 (a) For a qualified rehabilitation project with
25 final qualified rehabilitation expenditures of not more
26 than seven hundred fifty thousand dollars, fifteen
27 percent of the projected qualified rehabilitation
28 expenditures provided for in the agreement.

29 (b) For a qualified rehabilitation project with
30 final qualified rehabilitation expenditures of more
31 than seven hundred fifty thousand dollars but not more
32 than six million dollars, ten percent of the projected
33 qualified rehabilitation expenditures provided for in
34 the agreement.

35 (c) For a qualified rehabilitation project with
36 final qualified rehabilitation expenditures of more
37 than six million dollars, five percent of the projected
38 qualified rehabilitation expenditures provided for in
39 the agreement.

40 (4) The commencement date of the qualified
41 rehabilitation project, which shall not be later than
42 the end of the fiscal year in which the agreement is
43 entered into.

44 (5) The completion date of the qualified
45 rehabilitation project, which shall be within
46 thirty-six months of the commencement date.

47 (6) The date on which the agreement terminates,
48 which date shall not be earlier than five years from
49 the date on which the tax credit certificate is issued.

50 4. *Compliance.*

1 a. The eligible taxpayer shall, for the length
2 of the agreement, annually certify to the department
3 compliance with the requirements of the agreement.
4 The certification shall be made at such time as the
5 department shall determine in the agreement.

6 b. The eligible taxpayer shall have the burden
7 of proof to demonstrate to the department that all
8 requirements of the agreement are satisfied. The
9 taxpayer shall notify the department in a timely
10 manner of any changes in the qualification of the
11 rehabilitation project or in the eligibility of
12 the taxpayer to claim the tax credit provided under
13 this chapter, or of any other change that may have a
14 negative impact on the eligible taxpayer's ability
15 to successfully complete any requirement under the
16 agreement.

17 c. (1) If after entering into the agreement but
18 before a tax credit certificate is issued, the eligible
19 taxpayer or the qualified rehabilitation project no
20 longer meets the requirements of the agreement, the
21 department may find the taxpayer in default under the
22 agreement and may revoke the tax credit award.

23 (2) If an eligible taxpayer obtains a tax credit
24 certificate from the department by way of a prohibited
25 activity, the eligible taxpayer and any transferee
26 shall be jointly and severally liable to the state for
27 the amount of the tax credits so issued, interest and
28 penalties allowed under chapter 422, and reasonable
29 attorney fees and litigation costs, except that the
30 liability of the transferee shall not exceed an amount
31 equal to the amount of the tax credits acquired by
32 the transferee. The department of revenue, upon
33 notification or discovery that a tax credit certificate
34 was issued to an eligible taxpayer by way of a
35 prohibited activity, shall revoke any outstanding
36 tax credit and seek repayment of the value of any tax
37 credit already claimed, and the failure to make such a
38 repayment may be treated by the department of revenue
39 in the same manner as a failure to pay the tax shown
40 due or required to be shown due with the filing of a
41 return or deposit form. A qualifying transferee is not
42 subject to the liability, revocation, and repayment
43 imposed under this subparagraph.

44 (3) For purposes of this paragraph:

45 (a) "*Prohibited activity*" means a breach or default
46 under the agreement with the department, the violation
47 of any warranty provided by the eligible taxpayer
48 to the department or the department of revenue, the
49 claiming of a tax credit issued under this chapter for
50 expenditures that are not qualified rehabilitation

1 expenditures, the violation of any requirements of this
2 chapter or rules adopted pursuant to this chapter,
3 misrepresentation, fraud, or any other unlawful act or
4 omission.

5 (b) "*Qualifying transferee*" means a transferee who
6 acquires a tax credit certificate issued under this
7 chapter for value, in good faith, without actual or
8 constructive notice of a prohibited activity of the
9 eligible taxpayer who was originally issued the tax
10 credit, and without actual or constructive notice
11 of any other claim to or defense against the tax
12 credit, and which transferee is not associated with
13 the eligible taxpayer by being one or more of the
14 following:

15 (i) An owner, member, shareholder, or partner
16 of the eligible taxpayer who directly or indirectly
17 owns or controls, in whole or in part, the eligible
18 taxpayer.

19 (ii) A director, officer, or employee of the
20 eligible taxpayer.

21 (iii) A relative of the eligible taxpayer or a
22 person listed in subparagraph subdivision (i) or (ii)
23 or, if the eligible taxpayer or an owner, member,
24 shareholder, or partner of the eligible taxpayer is a
25 legal entity, the natural persons who ultimately own
26 such legal entity.

27 (iv) A person who is owned or controlled, in
28 whole or in part, by a person listed in subparagraph
29 subdivision (i) or (ii).

30 (c) "*Relative*" means an individual related by
31 consanguinity within the second degree as determined
32 by common law, a spouse, or an individual related to
33 a spouse within the second degree as so determined,
34 and includes an individual in an adoptive relationship
35 within the second degree.

36 5. *Examination and audit of project.*

37 a. An eligible taxpayer shall engage a certified
38 public accountant authorized to practice in this
39 state to conduct an examination of the project in
40 accordance with the American institute of certified
41 public accountants' statements on standards for
42 attestation engagements. Upon completion of the
43 qualified rehabilitation project, the eligible taxpayer
44 shall submit the examination to the department, along
45 with a statement of the amount of final qualified
46 rehabilitation expenditures and any other information
47 deemed necessary by the department or the department of
48 revenue in order to verify that all requirements of the
49 agreement, this chapter, and all rules adopted pursuant
50 to this chapter have been satisfied.

1 *b.* Notwithstanding paragraph "a", the department
2 may waive the examination requirement in this
3 subsection if all the following requirements are
4 satisfied:

5 (1) The final qualified rehabilitation expenditures
6 of the qualified rehabilitation project, as verified
7 by the department, do not exceed one hundred thousand
8 dollars.

9 (2) The qualified rehabilitation project is funded
10 exclusively by private funding sources.

11 *c.* Upon review of the examination, if applicable,
12 the department shall verify that all requirements of
13 the agreement, this chapter, and all rules adopted
14 pursuant to this chapter have been satisfied and shall
15 verify the amount of final qualified rehabilitation
16 expenditures. After consultation with the department
17 of revenue, the department may issue a tax credit
18 certificate to the eligible taxpayer stating the
19 amount of tax credit under section 404A.2 the eligible
20 taxpayer may claim. The department shall issue the tax
21 credit certificate not later than 60 days following the
22 completion of the examination review, if applicable,
23 and the verifications and consultation required under
24 this paragraph.

25 6. Notwithstanding any other provision of this
26 chapter to the contrary, the department may waive the
27 requirements of subsections 1 through 4, except the
28 requirements relating to allowable cost overruns in
29 subsection 3, paragraph "b", subparagraph (3), and
30 the requirements in subsection 4, paragraphs "b" and
31 "c", for qualified rehabilitation projects with final
32 qualified rehabilitation expenditures of seven hundred
33 fifty thousand dollars or less and may establish by
34 rule different application, registration, agreement,
35 compliance, or other requirements relating to such
36 projects.

37 7. The department may for good cause amend an
38 agreement.

39 Sec. 5. Section 404A.4, Code 2014, is amended by
40 striking the section and inserting in lieu thereof the
41 following:

42 **404A.4 Aggregate tax credit award limit.**

43 1. *a.* Except as provided in subsections 2 and 3,
44 the department shall not award in any one fiscal year
45 an amount of tax credits provided in section 404A.2 in
46 excess of forty-five million dollars.

47 *b.* Of the tax credits that may be awarded in
48 a fiscal year pursuant to paragraph "a", at least
49 five percent of the dollar amount of the tax credits
50 shall be allocated for purposes of new qualified

1 rehabilitation projects with final qualified
2 rehabilitation expenditures of seven hundred fifty
3 thousand dollars or less.

4 2. a. The amount of a tax credit that is awarded
5 during a fiscal year beginning on or after July 1,
6 2016, and that is irrevocably declined or revoked on or
7 before June 30 of the next fiscal year may be awarded
8 under section 404A.3 during the fiscal year in which
9 the declination or revocation occurs.

10 b. The amount of a tax credit that was reserved
11 prior to the effective date of this Act under section
12 404A.4, Code 2014, for use in a fiscal year beginning
13 before July 1, 2016, that is irrevocably declined or
14 revoked on or after the effective date of this Act,
15 but before July 1, 2016, may be awarded under section
16 404A.3 during the fiscal year in which such declination
17 or revocation occurs. Such tax credits awarded shall
18 not be claimed by a taxpayer in a fiscal year that is
19 earlier than the fiscal year for which the tax credits
20 were originally reserved.

21 c. The amount of a tax credit that was available
22 for approval by the state historical preservation
23 office of the department under section 404A.4, Code
24 2014, in a fiscal year beginning on or after July 1,
25 2010, but before July 1, 2014, that was required to
26 be allocated to new projects with final qualified
27 rehabilitation costs of five hundred thousand dollars
28 or less, or seven hundred fifty thousand dollars or
29 less, as the case may be, and that was not finally
30 approved by the state historical preservation office,
31 may be awarded under section 404A.3 during the fiscal
32 years beginning on or after July 1, 2014, but before
33 July 1, 2016.

34 d. Tax credits awarded pursuant to this subsection
35 shall not be considered for purposes of calculating the
36 aggregate tax credit award limit in subsection 1.

37 3. a. If during the fiscal year beginning July 1,
38 2016, or any fiscal year thereafter, the department
39 awards an amount of tax credits that is less than the
40 maximum aggregate tax credit award limit specified
41 in subsection 1, the difference between the amount
42 so awarded and the amount specified in subsection 1,
43 not to exceed ten percent of the amount specified in
44 subsection 1, may be carried forward to the succeeding
45 fiscal year and awarded during that fiscal year.

46 b. Tax credits awarded pursuant to this subsection
47 shall not be considered for purposes of calculating the
48 aggregate tax credit award limit in subsection 1.

49 Sec. 6. Section 404A.5, Code 2014, is amended to
50 read as follows:

1 **404A.5 Economic impact — recommendations.**

2 1. The department ~~of cultural affairs~~, in
3 consultation with the department of revenue, shall be
4 responsible for keeping the general assembly and the
5 legislative services agency informed on the overall
6 economic impact to the state of ~~the rehabilitation of~~
7 eligible properties qualified rehabilitation projects.

8 2. An annual report shall be filed which shall
9 include but is not limited to data on the number and
10 potential value of qualified rehabilitation projects
11 begun during the latest twelve-month period, the total
12 historic preservation and cultural and entertainment
13 district tax credits originally ~~granted~~ awarded or
14 tax credit certificates originally issued during that
15 period, the potential reduction in state tax revenues
16 as a result of all awarded or issued tax credits still
17 unused unclaimed and eligible for refund, and the
18 potential increase in local property tax revenues as a
19 result of the ~~rehabilitated~~ qualified rehabilitation
20 projects.

21 3. The department ~~of cultural affairs~~, to the
22 extent it is able, shall provide recommendations
23 on whether a the limit on tax credits should be
24 ~~established~~ changed, the need for a broader or more
25 restrictive definition of eligible property qualified
26 rehabilitation project, and other adjustments to the
27 tax credits under this chapter.

28 Sec. 7. NEW SECTION. 404A.6 Rules.

29 The department and the department of revenue shall
30 each adopt rules to jointly administer this chapter.

31 Sec. 8. Section 422.11D, Code 2014, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 **422.11D Historic preservation and cultural and**
35 **entertainment district tax credit.**

36 The taxes imposed under this division, less
37 the credits allowed under section 422.12, shall be
38 reduced by a historic preservation and cultural and
39 entertainment district tax credit allowed under section
40 404A.2.

41 Sec. 9. Section 422.33, subsection 10, Code 2014,
42 is amended by striking the subsection and inserting in
43 lieu thereof the following:

44 10. The taxes imposed under this division shall be
45 reduced by a historic preservation and cultural and
46 entertainment district tax credit allowed under section
47 404A.2.

48 Sec. 10. Section 422.60, subsection 4, Code 2014,
49 is amended by striking the subsection and inserting in
50 lieu thereof the following:

1 4. The taxes imposed under this division shall be
2 reduced by a historic preservation and cultural and
3 entertainment district tax credit allowed under section
4 404A.2.

5 Sec. 11. Section 432.12A, Code 2014, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 **432.12A Historic preservation and cultural and**
9 **entertainment district tax credit.**

10 The taxes imposed under this chapter shall be
11 reduced by a historic preservation and cultural and
12 entertainment district tax credit allowed under section
13 404A.2.

14 Sec. 12. APPLICABILITY. Unless otherwise provided
15 in this Act, this Act applies to agreements entered
16 into by the department and an eligible taxpayer
17 on or after the effective date of this Act, and
18 rehabilitation projects for which a project application
19 was approved and tax credits reserved prior to the
20 effective date of this Act shall be governed by
21 sections 404A.1 through 404A.5, Code 2014.>

COMMITTEE ON WAYS AND MEANS
JOE BOLKCOM, CHAIRPERSON